

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

WATCO TRANSLOADING, LLC

and

UNITED STEEL, PAPER AND FORESTRY,	Cases 04-CA-136562 <sup>1</sup>
RUBBER, MANUFACTURING, ENERGY,	04-CA-137372
ALLIED INDUSTRIAL AND SERVICE	04-CA-138060
WORKERS INTERNATIONAL UNION,	04-CA-141264
AFL-CIO, CLC, USW LOCAL 10-1	04-CA-141614

and

DENNIS ROSCOE	04-CA-138265
An Individual	

*David Faye, Esq.*, for the General Counsel.  
*Anthony B. Byergo and Julie A. Donahue, Esqs.*,  
*(Ogletree Deakins, Nash, Smoak & Stewart, P.C.)*  
for the Respondent.  
*Michael W. McGurrin, Esq.*, *(Galfand & Berger, LLP)*  
for the Charging Party Local 10-1.  
*Richard J. Albanese, Esq.*, *(Karpf, Karpf & Cerutti, P.C.)*  
for the Charging Party Dennis Roscoe.

DECISION

STATEMENT OF THE CASE

SUSAN A. FLYNN, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania on October 20-22 and December 2, 2015. Local 10-1 filed 5 charges between September 11, and November 25, 2014. Dennis Roscoe filed his charge on October 7, 2014. The General Counsel issued the consolidated complaint on December 18, 2014. The Respondent filed an answer on January 2, 2015, denying all material allegations. An amended complaint was issued on February 11, 2015. At the beginning of the trial, I granted the General Counsel's motion to amend the complaint to correct typographical errors.

---

<sup>1</sup> This lead case number which is the first charge filed by the Union does not appear on the cover sheet of some transcripts and exhibits.

The General Counsel alleges that Respondent committed numerous violations of Section 8(a)(1) of the Act as follows: Human Resource Manager Brooke Beasley prohibited an employee from discussing her interview with him; Watco Terminal Manager Brian Spiller violated the Act on several different occasions by: threatening employees if they selected union representation, soliciting grievances and granting benefits to discourage support for the Charging Party Union; promising employees improved wages and working conditions to discourage support for the Union and interrogating employees about their union sympathies.

The General Counsel also alleges that Respondent violated Section 8(a)(3) and (1) of the Act by terminating John D. Peters on August 26, 2014 and by disciplining Dennis Roscoe on several occasions and then terminating Roscoe on October 10, 2014.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

## FINDINGS OF FACT

### I. Jurisdiction

The Respondent, a Delaware corporation, provides rail switching services for industrial customers at 21 locations throughout the United States, including the facility at issue in this case in Philadelphia, Pennsylvania, where it employs 21 people. In Philadelphia, the Respondent services a petroleum refinery operated by Philadelphia Energy Solutions (PES). In 2014, the Respondent purchased and received goods valued in excess of \$50,000 at the PES facility directly from points outside of Pennsylvania. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, Steelworkers Local 10-1, is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### *Background*

The Respondent began its operations at the PES Philadelphia refinery on October 17, 2013. Watco is a contractor at this facility, transferring petroleum products. CSX trains, consisting of 100-120 cars loaded with crude oil, arrive at the facility. Once the trains are on PES property, Watco employees take over, operating the train locomotives and inspecting the rail cars. The Watco engineer, conductor, and switchman (or brakeman) brings the train to the appropriate track location. The oil cars are disconnected from the locomotive (that is driven elsewhere); the tracks are locked out and "blue flagged" by a supervisor, indicating that it is safe to work on those tracks. This process usually takes 3-3 ½ hours. Once completed, that crew brings the paperwork to a Watco supervisor, who posts it in the employee trailer, notifying the carmen (maintenance) that the train has been "spotted." The carmen go out and begin inspecting the cars and conducting maintenance and repairs. Concurrently, PES employees unload the crude oil; that may take 6-7 hours. When the carmen notice minor problems, they make the repairs. When the problem is significant, they mark the car and note the problem on the paperwork.

Those cars are later separated from the train and moved to another track on the facility. After a number of those cars accumulate, CSX takes possession and makes those major repairs.

When Watco began its operations in October 2013, all employees were new hires, who underwent orientation from October 1 to October 17, 2013. Some additional employees were hired on various dates thereafter. John D. Peters, a locomotive engineer, was one of those original hires.<sup>2</sup> In April 2014, Watco hired Dennis Roscoe as a carman.

Webb is the owner of the company, headquartered in Pittsburg, Kansas. Brooke Beasley is one of 7 People Service Managers (human resources) for Watco Companies, located in corporate headquarters in Pittsburg. She had primary responsibility for 5 facilities including Watco Transloading. Beasley reported to Sofrona Howard and Matt Lions, Directors of People Services, who reported to Chris Speers, Vice President of People Services.

At the Watco facility at issue, Brian Spiller was the Terminal Manager beginning in October 2013. He reported to Nathan Henderson, Director of Operations/Assistant Vice President for Operations for that region, who was located in Houston, Texas.<sup>3</sup> Subordinate to the terminal manager were 4 shift supervisors.

The trains are operated by 3-man crews: a conductor, an engineer, and a brakeman. There are also 2-man teams of mechanics, called carmen, who inspect and perform general maintenance and repairs on the railcars.

All employees normally work twelve hour shifts, though they may perform overtime work when necessary. It is not unusual for employees to have free time during their shifts, if no train is entering or departing the facility.

There are 2 trailers on the site. One is the supervisors' trailer, where supervisors work. The other is the employees' trailer. Employees spend their free time during their shifts in that trailer, where they have lockers and a break room. The trailers are connected by a wooden deck. Outside, perhaps 50' behind those trailers, is an area designated for smoking. For safety reasons, smoking is not permitted at the facility other than in the designated area, which is called the "smoking hut." It is in a gravel area and is covered on the top but open on all sides. R. Exh 1. There are also porta-johns in back, maybe 50-75' from the smoking hut.

#### *Employees Contact the Union*

In June and July 2014, Peters and Roscoe each independently, and without the other's knowledge, contacted the United Transportation Union. Each one spoke to James White, the union organizer. They both discussed the union with other employees, but neither had any knowledge that the other had contacted any union. Tr. 455-56.

<sup>2</sup> John D. Peters is the grandfather of John C. Peters, Jr., also a witness in this case. When I refer to Peters or John Peters, I am referring to the grandfather, John D. Peters, unless I indicate otherwise.

<sup>3</sup> Spiller was promoted to Regional Director of Operations in January 2015, succeeding Nathan Henderson. Henderson became Senior Vice President of Houston Operations in August 2015; Spiller succeeded him as Vice President of Operations.

*Spiller's Comments About Union Activity*

In July 2014, shortly after David Gordon was promoted to shift supervisor, Terminal Manager Spiller told Gordon to “keep his ear to the ground” regarding unionizing efforts, and that Peters was the leader of unionization efforts at the facility. Tr. 111-12.<sup>4</sup> Gordon was anti-union himself, and Spiller asked him to tell employees about his negative experiences with unions. Spiller made these comments to Gordon on 2 or 3 occasions. In early August, Peters asked Gordon his opinion about unionizing, Gordon expressed his anti-union sentiments and explained his reasons. Peters had been vocal in his support for the union, so Gordon was aware of Peters’ opinion. There is no evidence that the Respondent was aware of Roscoe’s union activity until August 21 at the earliest.

*Roscoe's Complaint to Spiller about Discrimination*

Mike Onuskanych had been hired in October 2013, and had extensive experience prior to that. Spiller felt Onuskanych went well above and beyond the requirements of the position on a daily basis, and was helpful and supportive to operations. Tr. 657-658. He discussed the matter with Nathan Henderson, who agreed it was important to reward such team members. Spiller then promoted Onuskanych to lead carman, with no supervisory responsibilities, but making him responsible for ensuring that all necessary parts and materials were on site, and that all necessary paperwork was properly completed by himself and all carmen. The promotion was noncompetitive; no vacancy was advertised. This occurred around mid-May 2014.

On July 29, Roscoe handed Spiller a letter in which he complained about nonpromotion of black carmen. GC Exh. 21. Specifically, he was concerned that the lead carman position had not been advertised, so the black carmen (he, Carl Pinder, Jr., and Kim Bronson) did not have the opportunity to apply, and the position was filled noncompetitively by Onuskanych, who was white. Further, 2 of Onuskanych’s sons were hired to do the same work as the black employees, at the same pay rate, despite having less, or no, prior experience. Tr. 272, 273, 395, 396, 397, 399-400, 403, 404, 405, 412; GC Exh. 7, 21, 41. There had not previously been a lead carman; the position was newly created for Onuskanych. The following day, June 30, Spiller called Roscoe, Pinder, and Bronson to the supervisors’ trailer to discuss the matter. Roscoe recalled that they met at 3:00 p.p. for over 2 hours. Tr. 273-74, 405, 407, 410. Spiller recalled the meeting taking 15-20 minutes. Tr. 660. Spiller explained that it was his decision and that he did not have to post jobs. He testified that he advised them that he wanted to reward hard work and exemplary performance, and that there would be other opportunities in the future. Spiller called Beasley a few days after that meeting, and told her of the employees’ concerns. Roscoe emailed Beasley a copy of his letter to Spiller, but she did not respond. It is unclear whether Beasley actually received that email. None of those employees again complained to Spiller about race discrimination.

---

<sup>4</sup> Respondent fired Gordon in November 2014. However, his testimony on this point was not contradicted by Spiller; thus I credit it.

*Peters' Complaints about Offensive Text Messages From Coworker*

On August 1, 2014, Peters was asked to stay on overtime, as engineer Leroy Henderson (no relation to Nathan Henderson) called out sick. Peters called Henderson and told him to come in, because he (Peters) could not stay. Less than 2 hours later, Henderson sent Peters a series of text messages that Peters found disturbing. GC Exh. 19. Peters went to shift supervisor Plotts and showed him the messages. Plotts requested to meet with Henderson but Henderson refused. Henderson did report to work later in that shift, albeit in an intoxicated state, and Peters went home.

Since Plotts had not dealt with the offensive texts, Peters raised the issue with Spiller the following day, via email.<sup>5</sup> Peters complained to Spiller that Henderson had sent a series of threatening, harassing, and disparaging text messages to his cell phone beginning on August 1, 2014 at 6:15 p.m., because he did not support the hiring of Henderson's friend, who had applied for a job with Watco. Peters advised Spiller that he had asked Plotts to discuss the texts with Henderson but Henderson refused to participate, so he now requests that Spiller speak to Henderson about his behavior. Spiller did not reply to Peters. He testified that when he returned to work after his vacation, he discussed the matter with each man separately. He understood that they had known each other from prior employment, thought the issue had been defused, and considered it resolved.. Tr. 653. However, Peters did not tell him that he was satisfied and did not wish to pursue the matter.

Peters also sent the text messages to Beasley, who did not respond. GC Exh. 19. She testified that she did not receive the email and that she was unaware that any complaint was received by her office. Beasley was, however, advised by Spiller that there had been a conversation regarding problematic text messages. Beasley notified Howard generally of the problem but did not provide her any details. No action was taken against Henderson for his conduct.

Spiller testified that he did not consider Henderson's language to be inappropriate or threatening although he agreed that the language might warrant further investigation. Tr. 688, 691-92. While the employees may use crude language, he drew the line as to acceptability when an employee found it necessary to complain to a supervisor, manager, or HR. He felt it significant in this instance that the two employees seemed to have resolved the dispute and that no action was required by him. Tr. 688.

*Beasley Investigation of Peters*

On August 4, 2014, employee Curtis Pettiford sent an email to Beasley and Director of Operations Nathan Henderson (Spiller's superior). Pettiford complained that Peters repeatedly called Pettiford a "faggot" and other offensive terms, suggesting that Pettiford was homosexual.

Beasley advised Howard of the complaint and immediately initiated an investigation of Pettiford's accusation against Peters, conducted by telephone. She interviewed Pettiford on August 4. Pettiford said the harassment began in November 2013 and had been witnessed by

---

<sup>5</sup> Spiller was on vacation at the time and did not see the email until his return.

several employees: Kim Bronson, Dennis Roscoe, Greg Baranyay, Leroy Henderson, Carl Pinder, and David Shertel. Pettiford told Beasley that he was offended in part because he is not gay and is married and has a child. He requested that he be transferred to another Watco facility because assignment to a different crew would not solve the problem. Pettiford stated that he would still have to interact with Peters on any crew at PES. He also said that he had no other issues with Peters.

On August 4, 2014, the Respondent took steps to ensure that Pettiford and Peters were never assigned to the same shift. The same day, Beasley interviewed Leroy Henderson, a locomotive engineer.<sup>6</sup> Henderson told Beasley that he heard Peters say that Pettiford was gay on one or more occasions when Pettiford was not present.

On August 5, Beasley interviewed Kim Bronson, a carman. Bronson said he had never witnessed offensive or derogatory name calling amongst employees at PES.

Beasley also interviewed Roscoe, a carman, on August 5. Roscoe said he had no knowledge regarding this situation and would like to decline comment.

On August 5, Beasley interviewed Greg Baranyay, a conductor. Baranyay reported that he heard Peters call Pettiford gay, but not in Pettiford's presence. This occurred 2 months prior to the interview. Baranyay told Beasley he thought Peters said this in a joking manner in part because Peters joked with him about hanging out in gay bars.

Beasley called Peters on August 5 and advised him that she was conducting an investigation into allegations against him. He testified that she told him that he was prohibited from discussing the conversation with anyone, including Spiller, Tr. 167. Beasley testified that she "requested" that each of the employees that she interviewed keep her interview with them as confidential as possible. Tr. 602. I credit Peters. It is highly unlikely that one in a position of authority would "request" rather than order confidentiality if they were concerned that a lack of confidentiality would compromise the investigation.

Peters denied calling Pettiford gay or "faggot." He admitted to joking around with Pettiford, but not about sexual orientation. Peters admitted to joking around with other employees about frequenting gay bars, but not with Pettiford nor about him. Beasley testified that she suspended her investigation on August 5 because Spiller was on vacation. However, she shared the information with Nathan Henderson, Spiller's boss, on August 5. Henderson could have fired Peters without Spiller's input, but did not do so.

#### *Decision to Terminate Peters*

The information acquired on August 4 and 5 constitutes all the information on which the Respondent relied upon in terminating Peters' employment on August 26, 2014. However, Beasley interviewed other employees about this matter after Peters' termination.

---

<sup>6</sup> None of the employees interviewed by Beasley testified in the instant hearing other than Peters and Roscoe. Pettiford did not testify. As to the results of Beasley's investigation, I rely on her written report of August 29, 2014. Resp. Exh. 4.

On the morning of August 19, 2014, Beasley, Terminal Manager Brian Spiller, Director of Operations Nathan Henderson, and Human Resources Director Sofrana Howard participated in a conference call to discuss Beasley's investigation. Resp. Exh. 5. During the call Spiller was in Ohio on company business. Henderson, who did not testify in this proceeding, was apparently in his office in Houston, Texas. Beasley and Howard were in their offices in Pittsburg, Kansas.

There is no documentation regarding what was said during this conference call in the record. However, Beasley, Howard, and Spiller testified that the Respondent decided to terminate Peters during this conversation. For reasons discussed below I do not credit this testimony.

### *Roscoe's Complaints about Smoking*

In early August, Roscoe saw shift supervisor Ryder smoking outside, in front of the trailers where work vehicles are parked. Roscoe told Ryder that he should not smoke there, and Ryder replied that he was the boss and Roscoe could not tell him what to do. Roscoe had observed Ryder and employee Mike Onuskanych smoking there on other occasions as well, and Mike smoking near the tracks where oil was being pumped into a tanker. On August 6, Roscoe advised shift supervisor Plotts that he had seen 2 employees smoking in areas other than the designated hut on several occasions, and that it constituted a safety hazard. He suggested that Plotts issue a memorandum to the employees reminding them to smoke only in the hut. Resp. Exh. 1.

Roscoe also contacted the PES Safety Coordinator about his observations, and he indicated he would contact Spiller about it. Subsequently, Roscoe reported on the Respondent's website that employees were smoking in unauthorized areas. He then sent Spiller an email on August 13, advising him that he had made Plotts and the PES Safety Coordinator "aware of the life-threatening and hazardous situation" caused by employees smoking in non-designated areas, and that employees were ignoring posted memos and bulletins stating the smoking policy. GC Exh. 22. On August 17, Roscoe forwarded that email to Beasley, advising her that he had reported to Spiller that Ryder and Mike Onuskanych as well as his sons, Kevin and Joseph, were smoking in non-designated areas in violation of PES policy. GC Exh. 23, 44. He also told Beasley that he felt Ryder was harassing him for reporting his smoking violation.

Beasley replied to Roscoe's email, that she would look into it. She also asked about the alleged retaliation. GC Exh. 44. She contacted Spiller about the situation and, on August 20, emailed Roscoe that Spiller would handle the situation including posting a notice. GC Exh. 45.

A notice was posted in the employee trailer and on the bulletin board reminding employees that they were required to use the designated smoking hut. Spiller testified that he also spoke with the individuals identified by Roscoe as having violated the policy.

### *August 15 Overtime Incident with Roscoe and Ryder*

On August 15, Roscoe worked past his shift end time at 6 p.m., making a repair to a train car and briefing his relief on the next shift about other needed repairs. SS Ryder sent Roscoe some text messages, but Roscoe did not receive them since his phone was in the trailer, not on

his person. He then called him on his walkie-talkie, and ordered him to come to the supervisors' trailer. When he arrived, Ryder told him to go home, since Bronson, his relief carman, had arrived, and he didn't want him working overtime. Roscoe replied that he needed to fix the pin, show Bronson the pin, and complete his paperwork. Ryder agreed, and Roscoe stayed  
 5 approximately another hour.

On August 17, Roscoe e-mailed Beasley and Spiller about the incident with Ryder on August 15, 2014. (TR. 286, 286-87, 289, 442, 445, 561; see Tr. 444; GCX 40; GC Exh. 45) Beasley had spoken with supervisors on August 15, so she was aware of the situation from their  
 10 perspective.

### *Employee Interaction With Union*

On August 21, Peters, Roscoe, Horne, and Salmond were on break in the employee  
 15 trailer. Peters and Roscoe began discussing the merits of unionizing. Peters went on a computer in the trailer and representation of another facility in the area, and that he knew the Union represented PES employees. He said he was interested in organizing the Respondent's workforce and he believed most employees were in favor of unionizing. He suggested that Savage come to the facility to talk to employees in the parking lot when the shifts changed, and half the  
 20 employees were available. He added that Savage could meet at least 12 employees in the parking lot, and that he would contact all employees coming on shift and ask them to come in early to hear Savage. Savage agreed to meet with employees in the parking lot at the PES facility later that day, about 5:15 p.m.

On the evening of Thursday, August 21, 2014, Savage came to the Watco employee  
 25 parking lot at the PES facility. He met with about 12 employees including Peters and Roscoe. Both Peters and Roscoe signed authorization cards. The gathering was observed by one or more shift supervisors, who reported to Terminal Manager Brian Spiller that Peters and Roscoe were circulating union authorization cards. Tr. 655.<sup>7</sup>  
 30

On Monday, August 25, Brooke Beasley flew from Kansas City, Missouri to Philadelphia, arriving at 9:25 p.m. Beasley testified that while she was en route to Philadelphia, Nathan Henderson and Spiller informed her of the union activity at the PES facility. The next  
 35 day, Spiller picked her up and drove her to the PES site. There is no evidence as to what Beasley did until 3:30 p.m. on the 25<sup>th</sup>. Peters reported to work at 2:00 p.m. At about 3:30 Spiller and Beasley summoned Peters to Spiller's office and terminated his employment.

---

<sup>7</sup> Spiller testified that he first learned of this union activity on Monday, August 25, his first day back at the PES terminal after being away for reasons not fully explored in this record. I do not credit this testimony. Shift Supervisors observed the union meeting in the parking lot on August 21 and I infer that if one thought that it was important enough to report this, they would not have waited 4 days. Spiller was not on vacation between August 21 and 25. His vacation ended the week of August 4-8. On August 19, he was on company business in Ohio. He testified that on August 21 he was at home in Pittsburg. In any event, there is no evidence that supervisors at the PES facility would have been unable to contact Spiller on Thursday, August 21, Friday, August 22, or over the weekend.

Peters appealed his termination to the Director of Operations Nathan Henderson. As a result, Beasley conducted more interviews on August 28<sup>8</sup> and apparently, for the first time, authored a written report of her investigation on August 29. Henderson denied Peters' appeal.

5 *Legal Analysis regarding John Peters' discharge*

10 In order to prove a violation of Section 8(a)(3) and (1), the General Counsel must show that union activity or other protected activity has been a substantial factor in the employer's adverse personnel decision. To establish discriminatory motivation, the General Counsel must show union or protected concerted activity, employer knowledge of that activity, animus or hostility towards that activity and an adverse personnel action caused by such animus or hostility. Inferences of knowledge, animus and discriminatory motivation may be drawn from circumstantial evidence as well from direct evidence.<sup>9</sup> Once the General Counsel has made an initial showing of discrimination, the burden of persuasion shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employee had not engaged in protected activity, *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981).

20 One thing that is perfectly clear is that Respondent was aware that John Peters had been passing out union authorization cards when it fired him on August 26. The timing of his discharge in conjunction with Watco's animus toward unionization is sufficient to meet the General Counsel's initial showing of discrimination. Aside from the timing of the discharge, Respondent's illegal grant of benefits to employees during the subsequent organizing campaign, which I discuss later, demonstrates its animus towards employees' efforts to organize Watco employees at PES.<sup>10</sup> The fact that other Watco facilities are unionized is irrelevant with regard to the company's actions in this case. Thus, the burden of persuasion shifted to Respondent to prove that it would have fired Peters even in the absence of his union activity. I find that it did not satisfy its burden.

30 The timing of Peters' discharge is suspicious for a number of reasons. First, all of the evidence upon which the company relied in discharging Peters was in its possession on August 5. The company's explanation for why he was not discharged until August 26 on the basis of this evidence is unpersuasive. Brooke Beasley testified that Brian Spiller was on vacation the week of August 3-9, 2014 and that his boss, Nathan Henderson, was on vacation during the week of August 10-16. However, Beasley consulted with Henderson and human resources manager Sofrana Howard the week of August 3-9. They decided to take action, even in Spiller's absence, by ensuring that Peters and Curtis Pettiford never worked on the same shift. Assuming the only reason for Peters discharge was Pettiford's complaint, there is no satisfactory explanation as to why Watco did not discharge Peters on or about August 5. Respondent has not explained why it was necessary to wait for Spiller's return. Henderson, who did not testify in this proceeding,

---

<sup>8</sup> This suggests that Respondent did not have sufficient information to justify the termination prior to August 28.

<sup>9</sup> *Flowers Baking Company, Inc.*, 240 NLRB 870, 871 (1979); *Washington Nursing Home, Inc.*, 321 NLRB 366, 375 (1966); *W. F. Bolin Co. v. NLRB*, 70 F. 3d 863 (6th Cir. 1995).

<sup>10</sup> Respondent's post termination conduct may be considered in determining anti-union animus, 2 *Sisters Food Group*, 357 NLRB 1816, 1836-37 (2011).

appears to have had the authority to discharge Peters immediately and there is no explanation as to why he did not do so.

Respondent's witnesses testified that the decision to terminate Peters was made during a conference call on Tuesday, August 19, a week before it actually fired Peters. However, there is nothing to support this assertion other than the self-serving testimony of its witnesses, Spiller, Beasley, and Howard. While there is documentary evidence that they participated in a conference call on August 19, R. Exh. 5, there is no documentary evidence as to what was discussed during this call - no emails, no notes, no memoranda. Respondent has a progressive discipline policy, G.C. Exh. 43, which does not mandate Peters' termination. There is no evidence that this policy was considered with regard to Peters on August 19, or at any other time. Prior to August 26, Respondent had never disciplined Peters. Tr. 169.

Moreover, if the decision to terminate was made on Tuesday, August 19, there is no satisfactory explanation as to why it was not effectuated for a week, or why Spiller could not have discharged Peters without a human resources representative being present. In contrast, when Respondent presented Dennis Roscoe with his 14-day suspension on October 2, Henderson and Spiller met him without a representative from human resources, Tr. 347-49. When Respondent discharged Roscoe, it sent him an email; nobody met with him, Tr. 363-64.<sup>11</sup>

While the record shows that on August 21, Brooke Beasley made airplane reservations to fly from Kansas to Philadelphia on August 25, this by itself does not satisfy Respondent's burden of persuasion that Watco decided to fire Peters before it knew of his union activities. Moreover, Spiller picked Beasley up and drove her to the PES facility on the morning of August 26, after they both knew of Peters' union activities.<sup>12</sup> There is no evidence in this record as to what Beasley did until 3:30 when Peters was called into the office to be fired. There is also no evidence as to what Beasley discussed with Henderson and Spiller on the afternoon of August 25, while she was waiting for her flight at Chicago Midway, Tr. 578—other than there had been union activity at the PES site. One would think that Peters' involvement would have been a subject of discussion since according to Beasley she was going to Philadelphia for the express purpose of firing Peters.

*Alleged Section 8(a)(1) violations*

*Complaint paragraph 4(a) Brooke Beasley prohibits Peters from discussing his interview with her*

I find that Respondent, by Brooke Beasley, did not violate the Act in giving this "confidentiality" instruction.

<sup>11</sup> When Roscoe reported for work on October 10, he was escorted off the PES premises by shift supervisor Gary Plotts. No representative of Watco ever met with him regarding the circumstances of his termination.

<sup>12</sup> While both Spiller and Peters testified that they became aware of Peters' union activities on August 25, I do not credit their self-serving testimony that they were not aware of it earlier—given that Peters' activities were open and notorious in the employee parking lot and there is persuasive evidence that shift supervisors were aware of these activities as early as August 21.

In *Caesar's Palace*, 336 NLRB 271, 272 (2001) the Board held that the employer did not violate Section 8(a)(1) by instructing employees not to discuss an ongoing drug investigation. It observed that employees have a Section 7 right to discuss discipline or disciplinary investigations. However, it found that Caesar's established a substantial and legitimate business justification which outweighed its infringement on employees' rights. The Board in footnote 5 made it clear that it is the Respondent's burden to establish a legitimate and substantial business justification.

In *Hyundai America Shipping Agency, Inc.* 357 NLRB 860 (2011) the Board found the employer violated Section 8(a)(1) by promulgating, maintaining and enforcing an oral rule prohibiting employees from discussing with other persons any matters under investigation by its human resources department. This rule was a blanket prohibition, applying to all matters regardless of the circumstances. The employer's rule in *Boeing Co.*, 362 NLRB No. 195 (2015), was similarly broad.

In *Caesar's Palace*, an employer witness testified that it never explained the purpose of the confidentiality instruction to the employees during the investigation, 336 NLRB at 273. The Board appears to have inferred from the circumstances of the investigation that the employer had a legitimate and substantial justification for its confidentiality instructions. I believe this could be inferred in many investigations in which the dangers of evidence being destroyed or fabricated, and witness intimidation are obvious. In this vein I would note the Rule 615 of the Federal Rules of Evidence, in requiring a judge to order the sequestration of witnesses upon the request of any party, is a tacit recognition of this danger.

In this case, I find that Respondent's legitimate reasons for instructing employees not to discuss its investigation are patently obvious. There was an obviously danger of the employees coordinating their stories or suggesting "helpful" interview answers to others. Thus, I find that Respondent's burden of establishing that these interests outweigh its infringement on employees' rights has been met.

*Complaint paragraph 4(b): Statements by Brian Spiller in the breakroom on August 25, 2014*

John Peters testified that on August 25, terminal manager Brian Spiller met with a group of employees in the employees' trailer. Peters testified that witnesses Matthew Horne, a current Watco employee at the time of this trial, and Dennis Roscoe, who was terminated on October 10 were present. Peters testified that Spiller looked directly at him and asked what was going on with the union campaign and then told the employees that Rick Webb, the owner of Watco, would shut the facility down if employees voted to have a union, Tr. 140.

However, when testifying, Horne said nothing about attending a meeting with Spiller and Peters in August and he testified that he never heard Spiller say anything akin to Watco tearing up its contract or losing the contract with PES, Tr. 89.<sup>13</sup> In light of this I credit Spiller's denial at Tr. 677—78 that he made any statements suggesting that unionization would lead to termination

---

<sup>13</sup> Horne, who worked for Watco at the time of the trial, had the least reason of any witness to fabricate testimony. I rely on his testimony heavily and where it does not corroborate other G.C.'s witnesses, I am disinclined to credit their testimony.

of Respondent's work at PES, or that he made any of the other statements testified to by Peters. I dismiss complaint paragraph 4(b).

*Meeting on August 28 (complaint paragraph 4(c))*

Dennis Roscoe testified that he attended a meeting with Brian Spiller and Shift Supervisor Brian Lockley in the management trailer on August 28, 2014. According to Roscoe, Spiller asked Roscoe to tell him about the union campaign. Then Roscoe testified that Spiller told him that he knew Roscoe was passing out authorization cards and that Spiller would pay him \$7 more than any other Watco employee on the site if he threw away any signed authorization cards he had received. Then, according to Roscoe, Spiller asked what employees wanted and that he and Nathan Henderson had already discussed giving employees at \$2-\$3 per hour raise, Tr. 332-334.

Spiller denied ever promising an employee a raise if he threw away authorization cards, Tr. 678. He also denied in a rather generalized way the other statements attributed to him by Roscoe without specifically mentioning Roscoe, Tr. 677-78. I find Spiller's denials at least as credible as Roscoe's accusations and therefore dismiss complaint paragraph 4(c).

*Meetings in early September 2014 (complaint paragraphs (d), (e) and (f))*

The Union filed a petition to represent Respondent's full-time and regular part-time engineers, conductors and car persons at the PES site on September 2, 2014. The Union and Watco entered into a stipulated election agreement on September 11, 2014 for an election to be held October 3, and October 4, 2014.

Matthew Horne, a current Watco employee at the time of trial, testified to the following regarding meetings conducted by Brian Spiller in September 2014, Tr. 75. Given the fact that Horne was an employee in good standing at the time of his testimony, appeared to have no ulterior or self-serving motive and was taking a risk of subtle retaliation, I credit his testimony.<sup>14</sup>

Horne testified that Spiller asked employees what their gripes or issues were and why they would think about selecting unionization. In response employees raised improved health benefits, vacation time, a seniority system and wages. Spiller replied by saying that he would try to obtain a \$2-3 an hour raise. At another meeting, he asked employees to fill out a sheet for rain gear and boot slips so that he could order them. In response to the employee requests, Spiller promised to attempt to obtain winter hats and gloves.

Spiller testified in a very general way that his conversations with employees after the union campaign started was consistent with those prior to the union campaign, Tr. 677-78. He did not specifically contradict Horne's testimony that he told employees in September that he would try to obtain a \$2-3 per hour raise.

---

<sup>14</sup> The testimony of current employees which contradicts statements of their supervisors is likely to be particularly reliable because these witnesses are testifying adversely to their pecuniary interest," *Flexsteel Industries*, 316 NLRB 745 (1995), enfd. mem. 83 F.3d 419 (5<sup>th</sup> Cir. 1996).

Section 8(a)(1) prohibits employers from soliciting employee grievances in a manner that interferes with, restrains or coerces employees in the exercise of Section 7 activities. Solicitation of grievances in not unlawful but raises an inference that the employer is promising to remedy the grievances. Additionally, an employer who has a past policy of soliciting employees' grievances may continue such a practice during an organizing campaign. However, an employer cannot rely on past practice to justify solicitation of grievances where the employer significantly alters its past manner and methods of solicitation, *American Red Cross Missouri-Illinois Blood Services Region*, 347 NLRB 347, 351 (2006); *Carbonneau Industries*, 228 NLRB 597, 598 (1977).

I conclude that the Respondent, by Spiller, violated Section 8(a)(1) in telling employees that it would try to get them a raise and in indicating that they would be receiving rain gear and boot slips. Although there is evidence that that Spiller had told employees that he was working on getting such items for employees, it was not until after the campaign started that Respondent indicated that employees *would* receive them.

The Board will infer that an announcement or grant of benefits during the critical period between the filing of a representation petition and a representation election is objectionable and violative of Section 8(a)(1). However, an employer may rebut this inference by showing there was a legitimate business reason for the time of the announcement or grant of the benefit, *Caterpillar Logistics, Inc.*, 362 NLRB No. 49 (2005), slip op. 1, n. 4, 9-10, enf'd. 835 F. 3d 536 (6<sup>th</sup> Cir. 2016). Watco has not rebutted this inference.

*Complaint paragraph 4(g): allegation that the Respondent provided lunch to employees on a more frequent basis in September 2014 than it had prior to the union organizing campaign*

Matthew Horne testified that prior to the commencement of the union organizing campaign, Respondent bought lunch for its employees only once or twice. After the campaign started, he testified that the company bought lunch once a week, Tr. 82. Brian Spiller testified there was no change in its providing food for employees after the commencement of the union campaign. I credit Horne for the reasons stated previously. The increase in the frequency of this benefit after the commencement of the organizing campaign violates Section 8(a)(1), *Caterpillar Logistics, Inc.*, *supra*, slip opinion pg. 1, n. 4.

*Complaint paragraphs 6 (b)-(e): Discipline of and termination of Dennis Roscoe*

In the afternoon of August 21, shift supervisor Ryder issued 2 written warnings to Roscoe. He told Roscoe they were from HR. (GC Exh. 25 and 26.) One warning was for insubordination to his supervisor regarding his overtime on August 15, and the other was a quality of work warning for sitting in the trailer instead of immediately beginning his maintenance activity. There is no evidence that Respondent was aware of any union activity on the part of Dennis Roscoe prior to the evening of August 21, 2014. However, I find that his complaint about race discrimination and his antismoking activity constitute protected concerted activity. Although Roscoe did not discuss his safety concerns regarding smoking with other employees, his complaints were made on behalf of all employees and were not purely personal concerns. Management was well aware of his complaints. Further, the facts asserted in the warnings are false; I credit Roscoe's testimony as to what occurred on August 15. On a daily

basis, as a carman, Roscoe sits in the employee trailer waiting until a train arrives and is “spotted.” On August 15, as on all other dates, he had no knowledge of when the train arrived and was ready for inspection until it was locked down, and the supervisor posted it on the board in the trailer. Roscoe testified that the train was spotted about 1 p.m. He then got dressed and  
 5 went to the tracks to conduct his inspection. If Spiller or Ryder had been aware at the time that Roscoe was sitting in the trailer after being advised that the train had been spotted, they certainly would have said something to him then, rather than waiting to issue a warning. Roscoe informed Ryder that he signed out at 7 p.m. (one hour of overtime). He was not paid for “turnstile time,” the time he spent getting undressed, cleaned up, changing, and cleaning up the trailer. Although  
 10 he was charged with 2 ½ hours of unauthorized overtime, Roscoe testified that he worked, and requested, only one hour of overtime. The additional time that he was onsite he had signed out. Moreover, Roscoe testified, and I credit his testimony, that it is standard procedure for him to explain needed repairs to the oncoming crew, that it had never been necessary to request overtime in advance in such situations, but rather that it was routine to continue working until  
 15 those discussions had concluded. I find that the General Counsel has met his burden and that the Respondent has not met its burden of demonstrating that it would have issued the warnings in the absence of Roscoe’s protected concerted activity.

Therefore I find that the Respondent violated Section 8(a)(3) and (1) in issuing Roscoe 2  
 20 disciplinary warnings on August 21, 2014.

*Incidents of September 23, 2014; Respondent sends Dennis Roscoe home*

On September 23, 2014, ten days before the scheduled representation election at Watco,  
 25 Respondent sent Dennis Roscoe home in what was essentially a suspension pending an investigation. He was not allowed to return to work until October 6 or 7, but voted in the election that was conducted by the Board on October 3 and 4.

On September 23, shortly after he arrived at work, Roscoe confronted Joseph  
 30 Onuskanych, who was not scheduled to work that day. Onuskanych had come to work for overtime pay as a flagman. Roscoe questioned why Onuskanych was at work, suggesting that his presence was not necessary for the work that was to be performed that day. Roscoe threatened to call human resources to complain about this.

At some point Roscoe said that the only reason Joseph Onuskanych and his brother Kevin  
 35 had jobs at Watco was because of their father, Michael Onuskanych, lead carman at Watco.

Roscoe also had a dispute with shift supervisor Brandon Lockley the same day. After  
 his conversation with Onuskanych, Roscoe told Lockley that he wanted to report to human  
 40 resources that Onuskanych was being allowed to be at work with nothing to do. Lockley told Roscoe that he was tired of Roscoe disrupting operations and that Roscoe should go do his work. Roscoe said that he had talked to Brian Spiller and that Spiller said he could wait for Spiller to get to work so that Roscoe could give him papers about another issue he had.

After talking to Lockley, Terminal Manager Brian Spiller consulted with his boss, Nathan  
 45 Henderson, and Human Resources Manager Sofrana Howard. Spiller then sent Roscoe home, essentially suspending him pending an investigation.

Howard instructed Spiller to obtain statements from witnesses. On September 23, Spiller took statements from the following employees: Joseph Onuskanych, shift supervisor Brandon Lockley, Michael Onuskanych, Matthew Horne, John C. Peters, Jr., Gregory Baranyay and Dennis Roscoe. Howard also flew to Philadelphia and conducted face to face interviews on September 25 with Joseph Onuskanych, Brandon Lockley, Mike Onuskanych, Matthew Horne, Greg Baranyay and Dennis Roscoe. Roscoe referred Howard to his attorney shortly after Howard called him. On September 29, Respondent interviewed Lockley a second time.

Of these witnesses only Roscoe, Matthew Horne, and John C. Peters, Jr. testified in this proceeding. Neither Horne nor Peters was asked about the events of September 23 concerning Dennis Roscoe.

Onuskanych's statement includes the following: Roscoe said, "the only reason I got this job is because of my dad and he was dicksucker in the form of hand and mouth gestures," R. Exh. 11. Joseph's father gave a statement that Roscoe "make a remark in front of our coworkers that the only reason Joe Onuskanych and Kevin Onuskanych are employed by Watco [is] because Mike Onuskanych sucks management's dick and stood there and made the action of sucking dick in front of my coworkers," R. Exh. 14. It is not clear that Mike Onuskanych was present during the exchange between Roscoe and his son, or whether he was relating what his son had told him. In this hearing, Roscoe denied making any crude, rude, or obscene gesture to Joe Onuskanych, Tr. 347, 503.

Other than Joe and Mike Onuskanych, no other witness claimed that Roscoe suggested in any way that Mike Onuskanych performed oral sex on management. Brian Lockley did not mention that in this initial statement, but in his second statement on September 29 stated that Joe Onuskanych told him that Roscoe had made "rude comments." R. Exh. 8.

On October 2, the day before the beginning of the representation election, Respondent called Roscoe into work to meet with Nathan Henderson and Brian Spiller. Spiller gave Roscoe a letter dated October 1 assessing a 14-day unpaid suspension, dating from September 23, and a final written warning. It also put Roscoe on a performance improvement plan, G.C. Exh. 34. In addition to insubordination, the suspension was based on a finding that Roscoe had made inappropriate gestures of a sexual nature.

The representation election was conducted at the PES facility on October 3 and 4. 13 employees voted against union representation; 7 voted in favor. No objections to the conduct of the election were filed and the Board certified the election results. Roscoe returned to work on October 7, 2014.

On or about October 9, Nathan Henderson called Spiller and told him that employee Leroy Henderson (no relation to Nathan Henderson) had complained that Roscoe pulled his car even with Henderson's and started cursing and threatening Henderson. Spiller and Henderson consulted with an attorney and decided to fire Roscoe on October 10, 2014. Respondent notified Roscoe of his termination by email on October 11.

*Legal Analysis with regard to the suspension and discharge of Dennis Roscoe*

The legal principles in *Wright Line*, 251 NLRB 1083 (1980) apply to the suspension and discharge of Dennis Roscoe. The General Counsel made its initial showing of discrimination.

Respondent was aware of Roscoe's union activities and had demonstrated animus towards the organizing campaign by virtue of its illegal grant of benefits to unit employees. Moreover, in the absence of sufficient non-discriminatory justification, the length of the suspension, encompassing the dates of the representation election, is another indication of discriminatory motive. The burden of proof thus shifts to the Respondent to prove that it suspended and discharged Roscoe for non-discriminatory reasons.

To satisfy its burden under *Wright Line*, an employer need not prove that an employee actually engaged in misconduct to justify discipline or discharge if it establishes that it had a good faith belief that the misconduct occurred, *McKesson Drug Co.*, 337 NLRB 935, 937 n.5 (2002).

Roscoe's suspension and, more importantly, the length of the suspension were based in part of Respondent's conclusion that he made an obscene gesture directed at Joseph Onuskanych. I find that Respondent did not have a good faith belief that this occurred. To the contrary, I conclude that it was a pretextual reason to insure that Roscoe was on suspension at the time of the representation election.

Had Respondent merely taken Joseph Onuskanych's complaint at face value, it would have been unnecessary to interview witnesses. However, Respondent did interview a number of witnesses and none of them corroborated Onuskanych's story, except for his father. As to the latter, it has not been established that Mike Onuskanych was present when Roscoe supposedly made this obscene gesture. There is, for example, no evidence of his reaction to such a remark, which one would expect under the circumstances.

Sofrana Howard testified that "it was found that he (Roscoe) made the alleged comments to Mr. Joe Onuskanych and that he made the alleged comments and then was insubordinate to Mr. Lockley," Tr. 629. I would note that the use of the passive voice is often used to avoid pinning responsibility on the person who performed an act or made a decision. However, more importantly, there is no explanation as to the basis upon which Respondent credited the assertions of Joe Onuskanych over Dennis Roscoe's denials.

I believe it also relevant to the question of the Respondent's good faith belief that Roscoe denied making the obscene remark under oath in the instant trial, while Respondent relied completely on hearsay and did not call Joe Onuskanych as a witness.

As a result of the above, I conclude that the Respondent has not established that it had a good faith belief that Roscoe made the obscene gesture and has not met its burden of proving that the length of his suspension was determined on a non-discriminatory basis.

*Roscoe's discharge*

There are 3 different versions of what happened on or about October 9, 2014 between Dennis Roscoe and Leroy Henderson. Roscoe testified under oath as to what transpired.

Henderson and his passenger Sabrina Harris did not. Henderson authored a document, R. Exh. 16, in which he stated that Roscoe pulled up next to him, yelled unprovoked obscenities at him, threatened him (i.e., Roscoe stated "he knew where I resided") and cut off his vehicle. Leroy Henderson then called Sofrana Howard and Nathan Henderson, but apparently not the police. Henderson's passenger, Sabrina Harris, a security guard for PES, gave an almost identical statement and also appears not to have contacted the police. Respondent, by Nathan Henderson and Brian Spiller, decided to fire Roscoe without getting his side of the story.

Neither Leroy Henderson, who still worked for Watco at the time of this trial, nor Sabrina Harris testified in this proceeding. Roscoe, on the other hand, denied under oath ever having a confrontation with Henderson, Tr. 365-66, 525-32<sup>15</sup>. I find his testimony to be credible. There is no explanation for the basis upon which Respondent took the allegations of Leroy Henderson at face value. Sabrina Harris did not know the identity of the individual with whom Henderson allegedly had a confrontation.

In light of this, I conclude that Respondent has not established that it had a good faith belief that Dennis Roscoe cursed and threatened Leroy Henderson. Moreover, Roscoe's discharge is tainted by his 14-day discriminatory suspension. Therefore, I find that Respondent has not met its burden of proving that it would have fired him on October 10 or suspended him for 14 days on October 1 in the absence of its animus towards his union activities.

*Summary of Conclusions of Law*

1. Respondent violated Section 8(a)(3) and (1) by terminating the employment of John Peters and Dennis Roscoe.

2. Respondent violated Section 8(a)(3) and (1) in suspending Dennis Roscoe for 14 days in October 2014.

3. Respondent violated Section 8 (a)(3) and (1) in issuing 2 written warnings to Roscoe.

4. Respondent, by Brooke Beasley, did not violate Section 8(a)(1) by instructing John Peters to keep her interview with him confidential.

5. Respondent did not violate Section 8(a)(1) on August 25, 2014 by interrogating John Peters, by creating the impression that employees' union sympathies were under surveillance or threatening to terminate Watco's presence at the PES site.

---

<sup>15</sup> Roscoe's testimony is a bit curious with regard to an affidavit he gave the Board Agent during the investigation the charge. He told her that Leroy Henderson was leaning outside the window of his car and looked like he was yelling or cursing at Roscoe. However, Roscoe told the Board Agent that he kept his windows rolled up and did not say anything to Henderson and assumedly kept driving, Tr. 529-30.

6. Respondent did not violate Section 8(a)(1) on or about August 28, 2014 by interrogating Dennis Roscoe, creating the impression that employees union activities were under surveillance, telling Dennis Roscoe that it would give him a raise if he threw away union authorization cards, soliciting employee grievances and impliedly promising to remedy them and making the other statements alleged in complaint paragraph 4(c).

7. Respondent, by Brian Spiller, violated Section 8(a)(1) of the Act in September 2014 by promising benefits to employees, including telling employees that he would try to get them a raise and in indicating that they would be receiving rain gear and boot slips, in order to discourage support for the Union.

8. Respondent violated Section 8(a)(1) in buying lunch on a more frequent basis than it had previously after it became aware of the union organizing drive and after the representation petition had been filed.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having discriminatorily discharged John Peters and Dennis Roscoe, must offer them reinstatement and make them whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). The Respondent shall compensate John Peters, Sr., and Dennis Roscoe for search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings. *King Soopers, Inc.*, 364 NLRB No. 93 (2016). Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

The Respondent shall compensate John Peters and Dennis Roscoe for the adverse tax consequences, if any, of receiving lump sum backpay awards. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014). In accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016), the Respondent shall, within 21 days of the date the amount of backpay is fixed either by agreement or Board order, file with the Regional Director for Region 4 a report allocating backpay to the appropriate calendar year for each employee. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>16</sup>

# ORDER

The Respondent, Watco Transloading , LLC, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Discharging, disciplining, or otherwise discriminating against any employee on the basis on their support for United Steel Workers Local 10-1, or any other union.

(b) Announcing, promising and/or granting benefits in order to dissuade employees from supporting United Steel Workers Local 10-1, or any other union.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

## 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer John D. Peters and Dennis Roscoe full reinstatement to their former jobs or, if those jobs no longer exists, to substantially equivalent positions, without prejudice to seniority or any other rights or privileges previously enjoyed.

(b) Make John D. Peters and Dennis Roscoe whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(c) Compensate John D. Peters and Dennis Roscoe for the adverse tax consequences, if any, of receiving lump sum backpay awards, and file with the Regional Director for Region 4, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(d) Compensate John D. Peters and Dennis Roscoe for their search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings.

(e) Within 14 days from the date of the Board's Order, remove from its files any reference to the John D. Peters and Dennis Roscoe discharges and Dennis Roscoe's written warnings and suspension and within 3 days thereafter notify John D. Peters and Dennis Roscoe in writing that this has been done and that the discharges and Roscoe's warnings and suspension will not be used against them in any way.

---

<sup>16</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

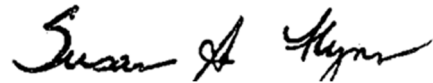
(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its Philadelphia, Pennsylvania (PES) facility copies of the attached notice marked "Appendix."<sup>17</sup> Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 26, 2014.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., April 5, 2017.



Susan A. Flynn  
Administrative Law Judge

---

<sup>17</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## **APPENDIX**

### **NOTICE TO EMPLOYEES**

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### **FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any of you for engaging in union or other protected activity, including your support for United Steelworkers Local 10-1 or any other union.

WE WILL NOT announce, promise, or grant you benefits in order to discourage you from supporting United Steelworkers Local 10-1 or any other union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer John D. Peters and Dennis Roscoe full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make John D. Peters and Dennis Roscoe whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest compounded daily.

WE WILL compensate these employees for their search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings.

WE WILL make Dennis Roscoe whole for any loss of earnings and other benefits resulting from his September-October 2014 suspension, less any net interim earnings, plus interest compounded daily.

WE WILL compensate John D. Peters and Dennis Roscoe for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year,

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharges of John D. Peters and Dennis Roscoe.

WE WILL within 14 days from the date of this Order, removed from our files any reference to the unlawful written warnings and suspension of Dennis Roscoe.

WE WILL, within 3 days thereafter, notify John D. Peters and Dennis Roscoe in writing that this has been done and that the discharges and Roscoe's suspension will not be used against them in any way.

**WATCO TRANSLOADING, LLC**

(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlrb.gov](http://www.nlrb.gov).

615 Chestnut Street, 7th Floor, Philadelphia, PA 19106-4404  
(215) 597-7601, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at [www.nlrb.gov/case/04-CA-136562](http://www.nlrb.gov/case/04-CA-136562) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (215) 597-5354.